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RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Jonathan D. Cobb Sr.
2 828 Weeks St.
3 East Palo Alto, CA
4 94303

5 Walter A. St. Clair
6 P.O. Box 2552
7 Menlo Park, CA
8 94026

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 JONATHAN D. COBB, SR., and
12 WALTER ARLEN ST. CLAIR,
13
14 Plaintiffs,

15 v.

16 ERNEST BREDE, LUIS CONTRERAS,
17 PAUL KOEHLER, LARRY LAVERDURE,
18 DONALD SHOWERS, AARON LUCAS,
19 STEVE MISTERFELD, ALAN SIUSTER,
20 RICHARD ASHE and DOE SDG:SSX,
21
22 Defendants.

) Case No.: 3:10-CV-03907-MEJ

) **JUDGE:** Maria-Elena James

) **MOTION FOR RELIEF FROM**
) **NONDISPOSITIVE PRETRIAL ORDER**
) **OF MAGISTRATE JUDGE**

) **Complaint Filed: August 31, 2010**
) **Trial Date: March 2012**

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1 **MOTION AND ACTION REQUESTED**

2 The Plaintiffs move for relief from Judge Ryu's **NOTICE OF SETTLEMENT**
3 **CONFERENCE AND SETTLEMENT CONFERENCE ORDERS**. The Plaintiffs request
4 the Court to take the actions requested in the accompanying proposed order.

5 **DESCRIPTION OF THE ORDER PLAINTIFFS OBJECT TO**

6 Referenced on the first page of Judge Ryu's Order in sub-paragraph two it states, "The parties
7 shall cooperate in providing discovery informally and expeditiously." Please see Exhibit A.

8 Up to this point the AOR for the Defendants, Mr. Anthony Smith has refused to cooperate
9 with any issued subpoenas. As such the Plaintiffs filed a motion with the court asking firstly
10 that the Settlement Conference be continued to a further date as it was becoming clear to the
11 Plaintiffs that obtaining the documents requested under subpoena was going to require a

12 Motion to Compel court order. Plaintiffs stated in their motion **REQUEST FOR**

13 **CONTINUANCE OF SETTLEMENT HEARING** that they needed an additional 30 days
14 for the disposition of the Motion to Compel they were completing. Plaintiffs felt that due to
15 Judge Ryu's Order which clearly stated above that cooperation was expected and due to the
16 fact that Judge Ryu would need specific documents in the review of the case, it would be only

17 natural to grant the extension of a mere 30 days. Attached to the Motion was the various
18 exhibits of subpoenas that Mr. Anthony Smith has purposely refused to cooperate with, thus
19 trying to suppress the Plaintiffs from obtaining evidence to make their case and circumvent
20 Discovery. See Exhibit B All along Mr. Smith has sought ways to try to undermine the

21 Plaintiffs and prevent them from obtaining items for Discovery, possibly in an effort to dcrail
22 the case or thereby trying to force a dismissal by making it seem and appear as if the
23 Plaintiffs had no specific evidence when all the while Mr. Smith was refusing to comply with
24 the court issued subpoenas to obtain said evidence. Plaintiffs felt that by the Judge seemingly
25 going against her own Order, this Judge appears intent on putting the Plaintiffs in a grave

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1 disadvantage going into the Settlement Conference. It was further noted in the Motion that
2 there was what appears to be a clear conflict of interest with Judge Ryu's participation in the
3 Settlement Conference. The Plaintiffs, although not questioning her qualifications were in
4 objection to her participation in the Settlement Conference by virtue of the fact that a private
5 individual, Mr. Jason Cobb is a key and central party in this action as he is the current CEO
6 of the corporation that this case centers around. As such he has made numerous appearances
7 in Judge James court to provide valuable information that he is privy to being the CEO of the
8 corporation in question. His participation up till now has been vital and necessary in
9 providing much needed clarification on issues that pertain to the case overall. Mr. Jason Cobb
10 is an integral part in this case and will be in the foreseeable future. However, Mr. Jason Cobb
11 has his own pending action with regard to a dispute at his place of employment, Cisco
12 Systems Inc., San Jose, CA. Mr. Jason Cobb's case revolves around privacy issues, work
13 place mobbing, possible fraud and various other charges involving personnel at Cisco
14 Systems, and the presiding Judge over that case that is in the Oakland, California Federal
15 Courthouse is being presided over by the very same Judge Donna Ryu. Plaintiffs felt that her
16 participation in their case and also being the presiding Judge over Mr. Jason Cobb's case,
17 could be clearly seen as a conflict of interest. This was brought up to Judge Ryu in the
18 original Motion by the Plaintiffs to continue the Settlement Conference. Please refer to
19 Exhibit B. Plaintiffs had not openly requested Judge Ryu to recuse herself but sought to make
20 her aware of this point in the hopes that in good faith, Judge Ryu would remove herself from
21 the Settlement Conference. The Motion containing all of this information, along with copies
22 of the subpoenas that AOR Anthony Smith has up to this point refused to comply with, was
23 filed on September 19th, 2011 at the San Francisco Courthouse in the clerks office on the 16th
24 floor. Several days later Plaintiffs obtained the document listed as Exhibit C while there to
25 verify documents. Exhibit C is a plain document that states only that the Motion was denied.
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1 It bears a stamp seal containing what appears to be Judge Ryu's signature or a facsimile of.
2 Upon follow up through a call to Judge Ryu's personal clerk, one Ivy Garcia in a telephonic
3 conversation on or about the date of September 26th, 2011, Ms. Garcia stated that it was Judge
4 James who in fact denied the Motion for the CONTINUANCE OF THE SETTLEMENT
5 HEARING. Yet the stamp on the return document clearly says it originated from Judge Ryu.
6 The Plaintiffs in no way believe that Judge James denied the original Motion and the fact that
7 Ms. Garcia stated Judge James denied said motion but yet the document obtained shows the
8 signature of Judge Ryu, Plaintiffs feel this anomaly is evidence of something else at work. .
9 In light of the fact that the Plaintiffs have long held the belief that due to the fact that Mr.
10 Smith started his legal career as a court clerk he may be utilizing contacts within the clerks
11 office in an effort to derail this case with the mishandling of documents, some of which that
12 have been misfiled, and some of which that have not been filed at all. This notion may seem
13 far fetched at best or insulting at worst but there is potential evidence to support this line of
14 reasoning. One such point of fact is the scheduled court hearing that occurred September 1,
15 2011 in Judge James courtroom at the hour of 10am. The Plaintiffs were in possession of a
16 document that had been filed some weeks earlier that Judge James herself did not possess and
17 knew nothing about. After calling a recess the Judge James physically left the courtroom to
18 go and find these documents which obviously had not been filed properly. While this is no
19 intended reflection against Judge James as there is no way she can be cognizant of what
20 certain clerks may be doing, it is a point of growing concern that demonstrates there is
21 possible complicity with potential clerks trying to possibly assist Mr. Smith by withholding
22 documents. There have been many such irregularities throughout this case thus far and the
23 Plaintiffs feel that AOR Anthony Smith is behind these tactics. That, coupled with his
24 continued refusal to comply with court subpoenas paints a dire portrait of a man who
25 seemingly is bent on derailing this case but yet hoping to make it appear as if existing
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1 irregularities are the fault of the Plaintiffs, when in reality he may be imploring a measure of
2 subterfuge with regard to this action. Irregardless, the Plaintiffs sought to have this matter
3 regarding Judge Ryu's participation reviewed for possible conflict of interest issues. As such
4 the Plaintiffs are requesting that Judge Ryu be replaced as presiding Judge over the
5 Settlement Conference or provide the Plaintiffs with the 30 day continuance as originally
6 requested so as to have an opportunity to serve the Motion to Compel on Mr. Anthony Smith
7 thus allowing the Plaintiffs to be able to comply with any standing Order about producing
8 documentation for any other scheduled Settlement Conference. It is the understanding of the
9 Plaintiffs that Mr. Smith has filed a motion to extend Discovery and as such it should only be
10 natural to also to continue the date for the Settlement Conference.
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14 DATE: 10-03-11

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17 Walter A. St. Clair
18 Walter A. St. Clair, Plaintiff

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20 Jonathan D. Cobb Sr.
21 Jonathan D. Cobb Sr.
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Exhibit
A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JONATHAN D COBB SR,

Plaintiff(s),

v.

ERNEST BREDE,

Defendant(s).

No. C-10-03907-MEJ (DMR)

**NOTICE OF SETTLEMENT
CONFERENCE AND SETTLEMENT
CONFERENCE ORDER**

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matter was referred to Magistrate Judge Donna M. Ryu for settlement purposes.

You are hereby notified that a settlement conference is scheduled for **October 18, 2011, at 10:00 a.m.**, at the U.S. District Court, 1301 Clay Street, Oakland, California 94612. For courtroom number and floor information, please check the Court's on-line calendar at <http://www.cand.uscourts.gov> (click "Calendars" link on left side, click link to Judge Ryu's calendar) or call Judge Ryu's Courtroom Deputy, Ivy Garcia, at (510) 637-3639, one week prior to the scheduled settlement conference.

The Court expects that any discovery that is needed for all sides to evaluate the case for settlement purposes will be completed by the date of the settlement conference. The parties shall cooperate in providing discovery informally and expeditiously.

A. Meet and Confer Requirement.

No later than fourteen (14) calendar days before the settlement conference and prior to the preparation of their Exchanged Settlement Conference Statements and Confidential Settlement Letters, counsel for the parties (or the party, if proceeding *pro se*) must meet and confer (in person

1 or by phone) to discuss matters pertinent to improving the prospects that the settlement negotiations
2 will be productive. During the meet and confer, the parties may address any subjects they feel are
3 appropriate, but they must discuss the following:

4 1. Who will attend the conference, including counsel and identification of the person(s)
5 with full authority to make the final decision as to whether any settlement offer is made, accepted, or
6 rejected (e.g., either the party or another person(s) if full authority does not rest with the party).

7 2. Which persons or entities must approve a proposed settlement agreement before it
8 can be executed, as well as the nature and duration of any such approval process.

9 3. Whether insurance is available to cover all or part of the claimed losses or to fund all
10 or part of any party's defense; whether tenders have been made to any insurance companies; and if
11 insurance is available, the name of and position held by each claims representative who will be
12 attending the settlement conference.

13 4. Whether it would be useful for settlement demands and/or offers to be made before
14 the settlement conference is convened.

15 5. Whether there are particular documents or other tangible things that should be
16 brought to the conference (e.g., to educate the settlement judge or to support or explain significant
17 contentions).

18 6. Any unusual issues or factors that could come into play in the settlement negotiations
19 or any especially sensitive matters that other counsel should be alerted to before the conference.

20 B. Lodged Settlement Conference Documents.

21 No later than ten (10) calendar days prior to the settlement conference, each party shall
22 submit the following:

23 (1) an Exchanged Settlement Conference Statement; and

24 (2) a Confidential Settlement Letter.

25 Two copies of each document shall be LODGED (not filed) with the U.S. District Court Clerk's
26 Office in Oakland, located at 1301 Clay Street, Suite 400S, 4th Floor, Oakland, California 94612.

27 The documents shall be submitted in a sealed envelope addressed to Magistrate Judge Ryu and
28 prominently marked "SETTLEMENT CONFERENCE DOCUMENTS - DO NOT FILE."

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1. Exchanged Settlement Conference Statements.

Each party shall serve a copy of the Settlement Conference Statement on all parties. Furthermore, counsel are strongly encouraged prior to the settlement conference to share with their clients the contents of the Settlement Conference Statement(s) received from opposing counsel.

The Settlement Conference Statement shall not exceed ten (10) pages of text. Parties are encouraged to include as exhibits any key documents and deposition excerpts up to twenty (20) pages. The Settlement Conference Statement shall include the following:

- a. A brief statement of the facts of the case.
- b. A brief statement of the principal claims and defenses.
- c. A description of the key factual and legal issues that are in dispute and a plain and concise statement of the specific evidence relevant to their determination. Portions of any exhibits relied upon by the parties shall be referenced and highlighted.
- d. A summary of the proceedings to date and a description of any pending motions.
- e. The bases for any damages calculations and a description of any non-monetary relief sought or non-monetary components of settlement offers or demands.
- f. A description of each component of each party's most recently communicated settlement demand or offer (describing specifically any non-monetary terms that were demanded or offered).
- g. For each party, a list of the names, titles, and positions of all persons who will be attending the conference.
- h. Where the party is a governmental entity, a description of which persons or entities must approve a proposed settlement agreement before it can be executed, as well as the nature and duration of that approval process.

2. Confidential Settlement Letters.

The Confidential Settlement Letter shall not be served upon other parties.

1 The Confidential Settlement Letter shall not exceed five (5) pages of text and shall include
2 the following:

- 3 a. Separately for each principal claim and defense, a forthright evaluation of the
4 strengths and weaknesses and likelihood that the party submitting the
5 Confidential Letter will prevail. Citations to any key legal authorities relied
6 upon by the parties as part of this evaluation shall be provided.
- 7 b. An estimate of the out-of-pocket expenses, attorneys' fees, and time: (a) spent
8 to date and (b) to be expended for further discovery, pretrial, and trial. If
9 plaintiff seeks attorneys' fees and costs, plaintiff's counsel shall be prepared at
10 the conference to provide sufficient information to enable the fee claim to be
11 evaluated for purposes of settlement.
- 12 c. A history of past settlement discussions (without revealing communications
13 whose disclosure to a settlement judge is prohibited), a description of the
14 principal obstacles (factual, legal, or other) to reaching agreement, and the
15 reason the parties' assessments of the settlement value of the case differ.
- 16 d. A realistic settlement figure or terms (including any non-monetary terms) that,
17 given all the circumstances, the party submitting the Confidential Letter
18 would consider seriously.
- 19 c. Where the party is insured or is a governmental entity, any foreseeable
20 barriers to insurance coverage or approval of a proposed settlement, or special
21 concerns that the insurer or governmental entity might want addressed.
- 22 f. A brief discussion of any of the subjects identified in Section A of this Order
23 that might be significant in the settlement dynamic.

24 C. Mandatory Personal Attendance.

25 *Pro se* parties must attend the conference in person. For represented parties, lead trial
26 counsel shall appear at the settlement conference with the parties and with the person(s) having full
27 authority to make the final decision as to whether any settlement offer is made, accepted, or rejected
28 (if full authority does not rest with the party). A person who needs to call another person not present

1 before making, accepting, or rejecting any settlement offer does not have such full authority. If a
2 party is a governmental entity, its governing body shall designate one of its members or a senior
3 executive to appear at the settlement conference with authority to participate in the settlement
4 conference and, if a tentative settlement agreement is reached, to recommend the agreement to the
5 governmental entity for its approval. An insured party shall appear with a representative of the
6 carrier with full authority to negotiate up to the limits of coverage.

7 Personal attendance is mandatory and will rarely be excused by the Court, and then only
8 upon a written request that is timely under the circumstances and that demonstrates extraordinary
9 hardship. Personal attendance may be excused only upon written authorization from the Court. If
10 the Court permits attendance by telephone, the person who is excused from personally appearing
11 must be available to participate by telephone throughout the entire conference.

12 D. Duration and Content of Settlement Conference.

13 It is not unusual for settlement conferences to last three (3) or more hours. Parties and their
14 representatives should be prepared to devote the entire day to the conference if necessary. Parties
15 are encouraged to participate in the settlement conference and frankly discuss their case. Statements
16 they make during the conference will not be admissible at trial in the event the case does not settle.
17 The parties and their representatives should be prepared to discuss such issues as their settlement
18 objectives; any impediments to settlement they perceive; whether they have enough information to
19 discuss settlement and if not, what additional information is needed; and the possibility of a creative
20 resolution of the dispute.

21 E. Continuances.

22 Any request to continue the settlement conference shall state the reason therefor and be
23 submitted in writing as soon as possible after consultation with the opposing party but well in
24 advance of the scheduled conference date. The request must demonstrate a compelling reason for a
25 continuance and shall state whether it is joined or opposed by the other party(ies). Submission of
26 such request shall be filed with the Court; a courtesy copy must be provided no later than 12:00
27 noon on the day after the document is filed and may be submitted by facsimile (510-637-1014).
28 Parties must appear on the calendared date unless the Court issues an Order continuing the matter.

1 If the date to which a continuance is sought would be past a deadline for holding the
2 settlement conference that was set by the judge to whom the case is assigned for trial, the party
3 seeking the continuance must secure permission from the trial judge to hold the settlement
4 conference during the proposed new time frame before seeking the continuance from Judge Ryu. A
5 writing evidencing the trial judge's extension of the deadline must accompany the party's request to
6 Judge Ryu for the continuance.

7 The parties shall immediately notify Judge Ryu's Courtroom Deputy, Ivy Garcia, at (510)
8 637-3639, if this case settles prior to the date set for the settlement conference.

9 Any failure to comply with the requirements of this Order may subject the parties and/or
10 counsel to sanctions.

11 IT IS SO ORDERED.

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13 Dated: August 19, 2011



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15 DONNA M. RYU
16 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JONATHAN D COBB SR et al,
Plaintiff,

Case Number: CV10-03907 MEJ

CERTIFICATE OF SERVICE

v.

ERNEST BREDE et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

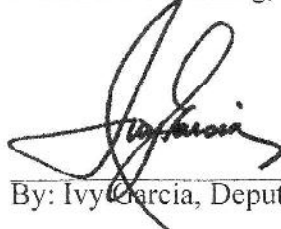
That on August 22, 2011, I SERVED true and correct copies of the Notice of Settlement Conference and Settlement Conference Order, by placing said copies in a postage paid envelope addressed to the persons hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copies into an inter-office delivery receptacle located in the Clerk's office.

Jonathan D. Cobb
828 Weeks St.
Palo Alto, CA 94303

Walter Arlen St. Clair
1227 Sevier St
Menlo Park, CA 94025

Dated: August 22, 2011

Richard W. Wieking, Clerk



By: Ivy Garcia, Deputy Clerk

Exhibit
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Jonathan D. Cobb Sr.
828 Weeks St.
East Palo Alto, CA
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Walter A. St. Clair
1227 Sevier Ave.
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94025

2011 SEP 19 PM 3:41

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JONATHAN D. COBB, SR., and
WALTER ARLEN ST. CLAIR,

Plaintiffs,

v.

ERNEST BREDE, LUIS CONTRERAS,
PAUL KOEHLER, LARRY LAVERDURE,
DONALD SHOWERS, AARON LUCAS,
STEVE MISTERFELD, ALAN SHUSTER,
RICHARD ASHE and DOE SDG:SSX,

Defendants.

) Case No.: 3:10-CV-03907-MEJ

) JUDGE: HONORABLE JUDGE DONNA RYU

) REQUEST FOR
) CONTINUANCE OF
) SETTLEMENT HEARING
) SCHEDULED FOR
) OCTOBER 18, 2011

) Complaint Filed: August 31, 2010